

July 2, 1997

The Honorable John D. Dingell
Ranking Member
Commerce Committee Democratic Office
564 Ford House Office Building
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Dingell:

In reply to your letter of April 10 to the Consumers for Fair Competition, we have provided the following response to the questions you have posed. We apologize for the delay in responding to your letter.

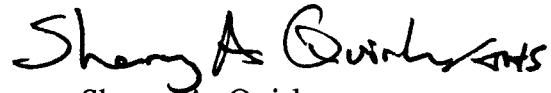
Since the Consumers for Fair Competition have developed agreement only on market power issues that merit attention in the current debate on electric restructuring, our response to your letter is accordingly limited. Our position on market power issues is most clearly delineated by our core principles on market power. To respond to your questions we have enclosed a copy of the principles for your consideration.

In addition, we have included copies of documents filed with the Senate Banking, Housing, and Urban Affairs Committee. As you are aware, legislation to repeal the Public Utility Holding Company Act of 1935 ("PUHCA") on a stand-alone basis, S. 621, was re-introduced by Chairman Alfonse D'Amato earlier this year, and his bill has already been approved by the Banking Committee. These documents underscore our collective belief that PUHCA should not be repealed prematurely, as well as provide additional information for your consideration regarding the coalition's concerns related to electric industry restructuring.

Finally, in further response to question 2 of your letter, we note that many members of the Consumers for Fair Competition have joined the City Council of the City of New Orleans in filing an appeal of the Securities and Exchange Commission's recently released Rule 58. For your reference, we have enclosed a copy of the filing made with the U.S. Court of Appeals for the D.C. Circuit.

We hope that this information is helpful. Please do not hesitate to contact us if we may provide further background on the core principles on market power or the pending appeal of Rule 58.

Sincerely,

A handwritten signature in black ink, appearing to read "Sherry A. Quirk". The signature is fluid and cursive, with a stylized "S" and "Q".

Sherry A. Quirk
for the Consumers for
Fair Competition

Enclosures

CONSUMERS FOR FAIR COMPETITION

Core Principles Protection Against Market Power Abuses

In 1935, Congress enacted the Public Utility Holding Company Act (PUHCA) in order to reduce and constrain the exercise of market power in the investor owned electric, and natural gas utility industries as well as to prevent abusive stock and business practices of far flung investor owned electric and gas utility holding companies.

The electric utility industry has changed significantly since 1935, and more profound changes loom on the horizon. While PUHCA has protected consumers in part by restraining market power, the market dominance of utilities continues to threaten captive consumers and the emerging competitive market.

Mergers, barriers to entry, self dealing, and cross subsidies can be used to stifle competition. An efficient and competitive electric industry will not develop if the market consolidates to a handful of large players or if certain participants are allowed to engage in discriminatory actions.

Satisfying PUHCA's underlying purposes -- the mitigation of market power and prevention of interaffiliate transactions and utility diversifications that threaten captive ratepayers -- are the best policy options for ensuring a truly competitive marketplace. The administration of PUHCA has clear limitations. In a potential transition to a competitive electric marketplace, the implementation of specific consumer-oriented reforms will be necessary. Most importantly, Congress should direct the Federal Energy Regulatory Commission (FERC) to assume the authority of the Securities and Exchange Commission under PUHCA to protect consumers from market power abuses. In considering legislation affecting the structure of the electric industry, including PUHCA repeal or reform, Congress must address the following specific issues:

- **Mergers and Acquisitions.** When two competitors merge, one less participant competes in the marketplace. In addition to preserving the existing authority to address utility mergers at the Department of Justice and Federal Trade Commission, Congress should direct the FERC to

reject or condition, as appropriate, any proposed merger including gas and electric combinations, or acquisition that creates, exacerbates, or maintains market power in any relevant geographic, product, or service market. The FERC should reject any merger if the anticipated consumer benefits can be achieved through other means.

- **Market Concentration.** Undue dominance by a player in any geographic or product market will frustrate and eventually eliminate effective competition. Congress should direct the FERC to take any corrective action to eliminate undue concentration in any relevant geographic, product, or service market.
- **Utility Diversification.** Consumers can face substantial risk when participants in a concentrated market diversify into unrelated or nonregulated businesses to benefit the shareholders. Congress should require and provide sufficient regulatory authorities to prohibit cross subsidies between regulated and nonregulated entities. Federal law should bar utility diversification that threatens captive customers (i.e., generation and transmission dependent consumers, consumers served by distribution systems that are not subject to competition) and fair competition, and prevent abusive or preferential affiliate transactions. Any definition of cross subsidization should capture the full value of tangible and intangible assets transferred between regulated and non-regulated entities. These protections should be waived when vibrant structural competition exists in relevant markets.
- **Transmission.** Even with the FERC's expanded transmission access authority granted under the Energy Policy Act of 1992, the potential exists for transmission owners to use their control of essential facilities to favor their own power sales. Moreover, payment of successive transmission fees for use of individual utility transmission facilities within a given geographic market can create economic inefficiencies and market distortions. To ensure implementation of competitive power markets and to check market abuse, Congress should direct the FERC to develop guidelines for and require mechanisms to ensure the independent control,

operation and planning of the grid and efficiently functioning nondiscriminatory and geographically broad independent transmission service.

- **Reliability.** All market participants have responsibility to ensure effective functioning of a reliable and competitive electricity market. The FERC must ensure that no market participant is able to avoid responsibilities for reliability or to cloak anti-competitive activity in the guise of reliability concerns. FERC should establish and enforce non-discriminatory rules and guidelines for ensuring reliability and that each market participant fulfills its contractual obligations, particularly in cases where a market participant attempts to manipulate operating procedures and guidelines so as to unduly influence the market clearing price.
- **FERC Review of Wholesale Electric Rates.** The role of FERC in reviewing and setting wholesale electric rates will be vastly reduced in a vibrant competitive market. However, given the anticipated continued concentration and potential monopoly control of products and services in certain markets, and in certain time periods, it is important for FERC to retain its authority to regulate effectively rates -- either on its own initiative or upon complaint -- where the potential for market power abuse continues.
- **Access to Information.** To assist the efficient operation of a competitive market, Congress should: (1) provide federal and state regulators with complete and timely access to relevant corporate books and records to uncover and prevent discriminatory transfer pricing; (2) provide federal and state regulators with audit authority regardless of the corporation's location; (3) direct the appropriate regulatory bodies to provide competitors with comparable access to relevant customer information; (4) require the FERC to make all relevant transmission use and pricing information available to all interested parties on a real-time basis; (5) give the FERC the authority to require unregulated electric utility affiliates to disclose their affiliations; and (6) require that state regulatory authorities provide adequate protection for utility customer proprietary information

and data. Utility information on individual customer sites should not be shared with affiliates in the aggregate unless such information is made available to competitors and individual site data should not be divulged unless the customer has provided knowledgeable written consent.